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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC, )  
AMO MANUFACTURING USA, LLC )  
and AMO SALES AND SERVICE, )  
INC., )

Plaintiffs, )

v. )

ALCON VISION, LLC, )  
ALCON LABORATORIES, INC. and )  
ALCON RESEARCH, LLC, )

Defendants. )

ALCON INC., ALCON RESEARCH, )  
LLC, and ALCON VISION, LLC, )

Counterclaim Plaintiffs, )

v. )

AMO DEVELOPMENT, LLC, )  
AMO MANUFACTURING USA, )  
LLC, AMO SALES AND SERVICE, )  
INC. and JOHNSON & JOHNSON )  
SURGICAL VISION, INC., )

Counterclaim Defendants. )

REDACTED - PUBLIC VERSION

C.A. No. 20-842 (CFC) (JLH)

[REDACTED]

[REDACTED]

**CONCISE STATEMENT OF FACTS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

**TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description of Document</b>
1	Collection of Employment and Consulting Agreements
2	Transcript of February 25, 2022 Deposition of Biren Mehta
3	Transcript of November 16, 2021 Deposition of Peter Goldstein
4	Transcript of January 10, 2022 Deposition of Kostadin Vardin
5	Transcript of February 23, 2022 Deposition of Imre Hegedus
6	Opening Expert Report of Douglas C. Schmidt, PhD.
7	Certification of Incorporation of Abbott Medical Optics, Inc.
8	IntraLase Meeting Minutes Dated September 16, 2022
9	Draft Software Requirements Specification for IntraLase FS2 Laser
10	Opening Expert Report of Stephen B. Wicker, PhD.
11	Opening Expert Report of Karen M. Becker, PhD.
12	510(k) Premarket Notification for IntraLase Fusion Laser
13	Transcript of March 2, 2022 Deposition of Lynda Jeffcoat
14	Transcript of January 28, 2022 Deposition of Carlos Suarez
15	Transcript of February 16, 2022 Deposition of John Suzuki
16	IntraLase FS Laser Operator's Manual
17	Certificate of Registration for "IntraLase FS Laser Operator's Manual"

18	Merger Agreement for Advanced Medical Optics, Inc. and IntraLase Corp.
19	Certificate of Conversion of IntraLase Corp. to AMO Development, LLC
20	Alcon's Fourth Supplemental Response to J&J's Interrogatory No. 5
21	Stock Purchase Agreement between Abbott Laboratories and Johnson & Johnson
22	510(k) Premarket Notification for the iFS Laser System
23	Certificate of Registration for "iFS Laser System 510(k) Premarket Notification (K073404)"
24	Certificate of Registration for "iFS Laser System 510(k) Premarket Notification (K063682)"
25	Collection of Certificates of Registration for "IntraLase FS Model 2/Model 3 Software"
26	Assignment of Copyright from Johnson & Johnson Surgical Vision, Inc. to AMO Development, LLC
27	AMO Meeting Minutes Dated July 20, 2009
28	Software Release Audit for the iFS Laser System
29	Offer of Employment from Advanced Medical Optics Development, LLC to Brent Schellhase
30	Certificate of Merger of Advanced Medical Optics and Abbott Laboratories

## **CONCISE STATEMENT OF FACTS**

### **I. PARTIES**

1. AMO Development, LLC (“AMO Development”), a subsidiary of Johnson & Johnson Surgical Vision, Inc. (“JJSV”), is among the Plaintiffs (collectively, “J&J”).

2. AMO Development was formerly IntraLase Corp. (“IntraLase”), until 2007 when it was acquired by Advanced Medical Optics, Inc. (“AMO”). Ex. 18 at JJSV\_00020894; Ex. 19 at JJSV\_00022742.

3. AMO became Abbott Medical Optics, Inc. in 2009 and then JJSV in 2018. Ex. 30 at JJSV\_00022721; Ex. 7 at JJSV\_00017395; Ex. 21 at JJSV\_00017400.

### **II. THE COPIED IFS SOURCE CODE**

#### **A. Versions and Copyright Registrations**

4. IntraLase developed the FS Model 2 and Model 3 devices and the iFS Advanced Femtosecond Laser device (collectively, “iFS”), which are femtosecond laser systems used for LASIK eye surgery. Ex. 22 at 5; Ex. 12 at 4.

5. In 2020, AMO Development registered copyrights in the computer programs that operate the iFS systems, including those listed below. Ex. 25 at JJSV\_00021188-1223.

iFS Version	Software	Copyright Reg. No.
1.00		TX 8-892-568
1.01		TX 8-892-570
1.02		TX 8-892-579
1.03		TX 8-892-616
1.04		TX 8-892-571
1.05		TX 8-892-576
1.06		TX 8-892-583
1.07		TX 8-892-582
1.08		TX 8-892-586
1.10		TX 8-892-565
1.12		TX 8-892-585
2.02		TX 8-892-564

6. [REDACTED]

[REDACTED]

[REDACTED] Ex. 6 ¶¶ 96-97 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Version 2.02 was released in January 2009.

Ex. 25 at JJSV\_00021210; Ex. 28 at JJSV\_00558716.

#### **B. Authors of the Copied iFS Source Code**

7. [REDACTED]

[REDACTED]

[REDACTED] D.I. 45 ¶ 7.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] D.I. 45 ¶ 7; Ex. 5 at 109:22-110:1, 111:2-10; *see also* Ex. 2 at 67:9–24, 78:3–13; Ex. 4 at 50:7-12.

10. [REDACTED]

[REDACTED]

[REDACTED] Ex. 6 ¶ 103.

11. [REDACTED]

[REDACTED] Ex. 2 at 103:17-104:3; Ex. 4 at 50:2-6.

12. No Alcon expert has identified any contributor to the Copied iFS Source Code other than [REDACTED].

**C. The iFS Source Code Authors Were Employees or Independent Contractors**

13. [REDACTED]

[REDACTED] Ex. 1 at 1. [REDACTED] Ex. 1 at 180.

14. [REDACTED]

[REDACTED] Ex. 1 at 29-30. [REDACTED]

[REDACTED] Ex. 1 at 181-85,

41-52. [REDACTED]

[REDACTED] Ex. 1 at 186-204. [REDACTED]

[REDACTED] Ex. 5 at 24:2-21.

15. [REDACTED]

[REDACTED] Ex. 4 at 31:21-25; Ex. 1 at 205, 81.

16. [REDACTED]

[REDACTED] Ex. 2 at 18:14-19; D.I. 45 ¶ 5.

17. [REDACTED]

[REDACTED] Ex. 1 at 88-93; Ex. 27 at 1.

18. [REDACTED]

[REDACTED] Ex. 1 at 77-80 [REDACTED]

[REDACTED]; *id.* at 1-6 [REDACTED]

[REDACTED]; *id.* at 30 [REDACTED]

[REDACTED]; Ex. 29 at BS\_00000001 [REDACTED]

[REDACTED]; D.I. 45 ¶ 5 [REDACTED]

[REDACTED].

**D. The iFS Source Code Authors Assigned Their Rights**

19.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 1 at 8-9.

20.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 1 at 81-82.

21.

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 1 at 36-37.

22.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED] Ex. 1 at 50-51 (2002); *id.* at 62 (2005); *id.* at 74-75 (2008).

23. [REDACTED]

D.I. 45 ¶ 10 [REDACTED]

[REDACTED]

[REDACTED].

24. [REDACTED]

[REDACTED] Ex. 1 at 88 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

**E. The Copied iFS Source Code Was Written by the iFS Source Code Authors in the Course of Their Work for IntraLase or AMO Development**

25. [REDACTED]

[REDACTED]

[REDACTED] D.I. 7; Ex. 6 ¶¶ 101-104; Macris Declaration

¶ 2. [REDACTED] Ex. 20 at 2, 4-5; Ex. 10

¶ 272, 277 [REDACTED]

[REDACTED].

26. [REDACTED]

D.I. 45 [REDACTED]

[REDACTED]; *see also* Ex. 5 at 24:14-21; Ex. 2 at 103:17-104:3; Ex. 3 at 24:21-25:8; Ex. 4 at 50:2-6; Ex. 5 at 19:18-23.

27. [REDACTED]

*E.g.*, Ex. 8 at JJSV\_00556260-61 [REDACTED]

[REDACTED]; Ex. 9 at 74

28. [REDACTED]

[REDACTED] Ex. 1 at 8, 10, 15.

29. [REDACTED]

[REDACTED] Ex. 1 at 22, 27.

30. [REDACTED]

[REDACTED] Ex. 3 at 38:22-39:2.

31. [REDACTED]

[REDACTED] Ex. 3 at 18:15-19.

32. [REDACTED]

[REDACTED] Ex. 3 at 28:3-5.

33. [REDACTED]

[REDACTED] Ex. 10 ¶ 279.

### III. COPIED FDA SUBMISSIONS AND OPERATOR'S MANUAL

34. IntraLase submitted 510(k) applications (numbered K063682 and K073404) to the FDA in connection with obtaining regulatory approval for the iFS systems, which included iFS technical documentation (the “Copied FDA Submissions”).

35. AMO Development registered its copyrights in the Copied FDA Submissions, which have never been published. Ex. 23; Ex. 24.

36. [REDACTED]

[REDACTED] Ex. 12 at 5-9;

Ex. 22 at 6-10; *see also* Ex. 11 ¶¶ 73-74, 191 & n.226, Appx. C; Ex. 15 at 63:24-65:11; Ex. 13 at 27:7-30:4; Ex. 14 at 124:25-125:10.

37. [REDACTED]

[REDACTED] Ex. 11 ¶ 74; Ex. 1 at 171-73; Ex. 13 at 9:10-13:1; Ex. 14 at 18:15-17.

38. [REDACTED]

[REDACTED] Ex. 1 at 107, 110, 128-29, 141-42, 153-54; Ex. 15 at 93:9–94:5; 97:20–98:19, 99:6–22.

39. AMO Development registered its copyrights in the operator’s manual for iFS (“Copied Operator’s Manual”). Ex. 17 at JJSV\_01046915.

40. [REDACTED]

[REDACTED]  
Ex. 16 at JJSV\_01046864.

41. [REDACTED]

[REDACTED] Ex. 20 at 42-53.

#### **IV. AMO DEVELOPMENT OWNS ALL COPYRIGHTS IN THE ASSERTED WORKS**

[REDACTED]  
[REDACTED]  
[REDACTED] Ex. 26 at JJSV\_00020808-09.

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*/s/ Brian P. Egan*

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August 19, 2022

**CERTIFICATION**

This concise statement of facts complies with the type and word limitation in Paragraph 24(f) of the Scheduling Order (D.I. 61) because it is written in 14-point Times New Roman font and contains 1,737 words according to the word count feature of Microsoft Word and thus does not exceed the 1,736 word limit set forth in the Scheduling Order.

*/s/ Brian P. Egan*

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Brian P. Egan (#6227)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 2, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on September 2, 2022, upon the following in the manner indicated:

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